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Michael K. Powell, Chairman  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: CC Docket No. 95-116

Dear Chairman Powell:

I am writing to you to express BellSouth's concern regarding the Commission's recent order responding to CTIA's requests for clarification of wireless-wireless porting issues.<sup>1</sup> Although the Commission took care to limit the scope of this order to wireless-to-wireless number porting obligations, the reasoning underlying some of the conclusions reached in that order, if extended to wireline-to-wireless porting obligations, could lead to outcomes inconsistent with law and sound policy. Of particular concern are two facets of the order: (1) the Commission's interpretation of the definition of "number portability" appearing in the Communications Act of 1934, as amended ("the Act");<sup>2</sup> and (2) its conclusion that porting intervals in excess of two and one-half hours could violate the reasonableness standard of Section 201 of the Act.<sup>3</sup> BellSouth urges the Commission to delay any decision to apply these conclusions in the context of intermodal porting until the Commission has fully considered, in a notice and comment rulemaking proceeding, the impact of such conclusions upon consumers, state commissions, and wireline and wireless carriers.

### **Porting Boundaries**

A fundamental question the Commission has yet to answer in the context of intermodal porting is "what does the word 'local' in the phrase "local number portability" mean?" In paragraph 11 of the *Wireless Order*, the Commission has interpreted the term "number portability" to mean that "consumers must be able to change carriers while keeping their telephone number as easily as they may change carriers without taking their telephone number with them." This statement could be interpreted to require wireline carriers to implement location portability beyond the rate center. If applied to wireline customers,

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<sup>1</sup> *Telephone Number Portability*, Carrier Requests for Clarification of Wireless Porting Issues, Memorandum Opinion and Order, CC Docket No. 95-11, FCC 03-237 (rel. Oct. 7, 2003) ("Wireless Order") Petition for Declaratory Ruling, *Telephone Number Portability*, CC Docket No. 95-116 ("January Petition"); and Petition for Declaratory Relief, *Telephone Number Portability*, , CC Docket No. 95-116 (May 13, 2003) ("May Petition").

<sup>2</sup> *Wireless Order* ¶ 11.

<sup>3</sup> *Wireless Order* ¶ 26.

this interpretation would represent a significant change in the Commission policy regarding the scope of number portability as set forth in the First Report and Order in CC Docket No. 95-116.<sup>4</sup> In that order, the Commission recognized that, today, wireline telephone subscribers must change their telephone numbers when they move outside the area served by their current central office, *i.e.*, their rate center.<sup>5</sup> The Commission declined to require wireline carriers to permit customers to keep their telephone numbers when they move outside of their current rate center because such a requirement would create consumer confusion and would “force[] consumers to dial ten, rather than seven, digits to place local calls to locations beyond existing rate centers.”<sup>6</sup> The Commission noted that this customer confusion could be avoided, but only if “carriers, and ultimately consumers, would incur the additional costs of modifying carriers’ billing systems, replacing 1+ as a toll indicator, and increasing the burden on directory operator and emergency services to accommodate 10-digit dialing and the loss of geographic identity.”<sup>7</sup>

In 1996, the Commission concluded that to avoid consumer confusion and other disadvantages inherent in requiring location portability, it should be left to state regulatory bodies to determine whether to require wireline carriers to provide location portability.<sup>8</sup> The Commission reached this conclusion because of its recognition that rate centers and local calling areas “have been created by individual state commissions.”<sup>9</sup> Thus application of the interpretation of “number portability” to wireline carriers would constitute a fundamental change, not only in the Commission’s view of wireline carriers’ porting obligations under the Act, but also in its view of which agency is best positioned to compel such a change. Such a significant shift in policy and regulation clearly requires a more complete justification than appears in the Wireless Order.<sup>10</sup> It is also difficult to believe that the Commission would reach such a decision without prior consultation with the state commissions about the effects on consumers in their states of such a policy shift.<sup>11</sup>

A decision to apply this interpretation to the wireline-to-wireless porting obligations on November 24, 2003 would also place wireline carriers at a significant competitive disadvantage and would thus be glaringly inconsistent with the Commission’s numbering and competitive policies. On numerous occasions during the past few months, BellSouth representatives have spoken with FCC staff members about the issues relating to intermodal local number portability raised, *inter alia*, by the CTIA petitions

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<sup>4</sup> *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, ¶¶ 181-185 (1996) (“First Report and Order”).

<sup>5</sup> *Id.* ¶ 174.

<sup>6</sup> *Id.* ¶ 184.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* ¶ 186.

<sup>9</sup> *Id.*

<sup>10</sup> See *Penzoil Co. v. F.E.R.C.*, 789 F.2d 1128 (5<sup>th</sup> Cir. 1986) (agency’s failure to consider all relevant factors and provide a reasoned basis for its decision may render an opinion arbitrary and capricious); *Greater Boston Television Corp. v. F.C.C.*, 444 F.2d 841 (C.A.D.C. 1970) (agency must articulate with reasonable clarity its reasons for decision and identify the significance of crucial facts); *WAIT Radio v. F.C.C.*, 418 F. 2d 1153 (C.A.D.C. 1969) (agency or commission must articulate with clarity and precision its findings and reasons for its decision). See also *Hanly v. Mitchell*, 460 F.2d 640 (2d Cir. 1972) (it is arbitrary and capricious for an agency not to take account of all relevant facts in making its determination).

<sup>11</sup> See *First Report and Order* ¶ 186; *Telephone Number Portability*, Second Report and Order, 12 FCC Rcd 12281, ¶ 28 (1997).

filed in January 2003 and May 2003.<sup>12</sup> BellSouth has explained why the Administrative Procedure Act requires that, before the Commission changes either the scope of wireline carriers' porting obligations or the technical and administrative standards that currently define those obligations (which are codified in Section 52.26(a) of its rules), the Commission conduct a further rulemaking proceeding.<sup>13</sup> BellSouth has described the difference between the local calling area and telephone number assignment policies of wireline and wireless carriers, the role of state regulators in defining the former's policies, and the concomitant competitive disadvantage that the Commission's adopting CTIA's proposal would impose on wireline carriers.

BellSouth's recent written and oral presentations were neither the first presentations of these issues to the FCC,<sup>14</sup> nor even the first in which BellSouth raised these issues.<sup>15</sup> Over five years ago, the North American Numbering Council ("NANC") explained to the Commission that significant policy questions had to be addressed before the Council could determine the changes to technical and administrative rules governing wireline portability necessary to bring wireless carriers into the portability environment.<sup>16</sup> In 1998 and again in its 2000 Report on Wireless LNP issues, the NANC described the issues arising because of the differences in the way wireless and wireline carriers received and assigned numbering resources to their customers and asked the Commission for the policy guidance NANC needed to complete the task of "wireline-wireless integration."<sup>17</sup> Without endorsing any of them, the NANC also included several alternatives that its LNPA Working Group has identified as potential alternative methods to achieve parity from an end user's perspective between his ability to port from wireline to wireless and his ability to port from wireless to wireline.<sup>18</sup>

The issues arise because incumbent local exchange carriers ("ILECs"), unlike wireless carriers, have historically used the rate center architecture to determine whether a call is a local or a toll call for which they will impose either access charges or intraLATA toll charges. In order to distinguish between a customer's local and toll calls, the ILEC assigns that customer a telephone number associated with the rate center in which the customer resides; if the customer moves from the rate center, the ILEC assigns the customer a new telephone number associated with the rate center of his new location. When wireline local number portability was implemented in 1997, the Commission codified the NANC recommendation that all wireline competitors observe the rate center limitation on porting that the ILECs had historically observed. This meant that all

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<sup>12</sup> See, e.g., Ex Parte Letters from Kathleen B. Levitz, BellSouth, to Marlene H. Dortch, FCC, CC Docket No. 95-116 (May 1, 2003, July 23, 2003, Sept. 5, 2003, Sept. 9, 2003). The January CTIA petition asked the Commission to require wireline carriers to honor porting requests from wireless carriers with footprints covering the wireline carrier's rate center even if the wireless carrier had no numbering resources associated with that rate center. The May petition requested that the Commission require that wireline carriers complete requested ports within two and one-half hours rather than the four days now required by Commission rule.

<sup>13</sup> See Ex Parte Letter from Kathleen B. Levitz, BellSouth, to Marlene H. Dortch, FCC, CC Docket No. 95-116 (Sept. 30, 2003).

<sup>14</sup> See North American Numbering Council ("NANC"), LNPA Working Group Report on Wireless Integration (May 8, 1998) ("NANC 1<sup>st</sup> Report"); NANC, LNPA Working Group 3<sup>d</sup> Report on Wireless Wireline Integration (Sept. 30, 2000) ("NANC 3<sup>d</sup> Report").

<sup>15</sup> See Ex Parte Letter from Kathleen B. Levitz, BellSouth, to Marlene H. Dortch, FCC, CC Docket No. 95-116 (Dec. 4, 2002).

<sup>16</sup> NANC 1<sup>st</sup> Report, Appendix C.

<sup>17</sup> NANC 3<sup>d</sup> Report at 18-19.

<sup>18</sup> NANC 3<sup>d</sup> Report at 18-19.

wireline local service providers would obtain numbering resources for each rate center in which they competed, use numbering resources associated with a rate center only for their customers located in that rate center, and assign their customers moving to a new rate center a new telephone number drawn from numbering resources associated with that new rate center. Thus, under the existing rules,<sup>19</sup> service provider portability does not extend beyond the rate center. Wireless carriers, however, do not obtain numbering resources for every rate center within their service footprint. They also do not adhere to a policy of assigning each of their customers a telephone number associated with that customer's billing location. The result is that a customer living in rate center A may have a number for his wireless phone associated with rate center B, which may not lie even in the same geographic area code as rate center A.

If the Commission applies the *Wireless Order's* interpretation of number portability, the mismatch described in the preceding paragraph will prevent a wireline carrier from being able to offer that wireless customer a competitive alternative to his wireless service that does not require a number change. This mismatch will also prevent the wireline carrier from being able to win back a customer located in rate center A who ports his telephone number to a wireless carrier and then moves to rate center B because the customer's telephone number would no longer be drawn from numbering resources associated with the rate center in which he is located.

In earlier ex partes, BellSouth has explained why the Administrative Procedure Act requires that the Commission issue a further notice prior to changing either the scope of wireline carriers' porting obligations or the technical and administrative standards, codified at Section 52.26(a) of the Commission's rules, governing the provision of local number portability.<sup>20</sup> We have described the mismatch between local calling areas and telephone number assignments. We have also described the competitive disparity that results if wireline carriers must port a customer's telephone number to any wireless carrier with a footprint in that customer's rate center. The recently released *Wireless Order*, however, compels BellSouth to make these points again.

With respect to the scope of the competitive disparity point, I note that, according to CTIA, wireless carriers have drawn numbering resources for only one out of every eight rate centers within their footprints.<sup>21</sup> Thus, applying the reasoning presented in the CTIA January petition and the *Wireless Order's* interpretation of number portability in the intermodal context, would mean that wireless carriers could compete for every one of the wireline carrier's customers located within the wireless carrier's footprint. The wireline carrier, however, could compete only for wireless customers in, at most, one out of eight of those rate centers. Moreover, as noted above, wireline carriers would be foreclosed from winning back any customer who ported his number to a wireless carrier and then moved to another rate center, while keeping his old number.

Such a decision would also be inconsistent with long-standing Commission policy objectives governing numbering resource administration, comity with the states, and competition. The Commission decisions affecting the North American Numbering Plan ("NANP") have consistently reflected its commitment that:

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<sup>19</sup> 47 C.F.R. §52.26(a).

<sup>20</sup> See Ex Parte Letter from Kathleen B. Levitz, BellSouth (Sept. 30, 2003), to Marlene H. Dortch, FCC, CC Docket No.95-116 (Sept. 30, 2003); *Sprint v. FCC*, 315 F. 3d 369, 373 (D.C.Cir.2003).

<sup>21</sup> *January Petition* at 6.

Administration of the NANP should not unduly favor or disadvantage any particular industry segment or group of consumers.  
Administration of the NANP should not unduly favor one technology over another. The NANP should be largely neutral.<sup>22</sup>

As I have explained above, a decision at this time to disassociate numbers from their historical roots would place wireline carriers at a significant disadvantage in their efforts to compete with wireless carriers. I fear, however, that Paragraph 11 of the *Wireless Order* could be read to support that inequitable and unsound conclusion.

Another relevant policy here -- a concern that has driven both federal and state commission decisions relating to numbering -- is the preference for seven-digit dialing<sup>23</sup> This policy would be a (perhaps unintended) casualty of extending wireline porting obligations beyond area code boundaries. The Commission may ultimately conclude that the public interest justifies the customer confusion and upheaval that will result from such a change, but to reach such a conclusion without prior consultation with state commissions and without a transition period during which consumer education could occur would be a significant departure from Commission precedent in the numbering arena and from the sensitivity it has shown to consumers and state commissions on the "front line" when such changes occur.<sup>24</sup>

Changing the rules governing wireline number portability obligations effective November 24, 2003 would deny the carriers and their customers a transition period that might significantly enhance intermodal porting. Such a transition would permit the industry to develop uniform processes to govern the new obligations. It would also permit individual carriers to make the necessary internal changes to their operation support systems in order to comply with the changed obligations. Eliminating such a transitional period would also be a noteworthy departure from the Commission's policy of giving industry segments affected by such changes a reasonable time to respond.<sup>25</sup> An obligation to

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<sup>22</sup> *Administration of the North American Numbering Plan*, Report and Order, 11 FCC 2588, ¶ 15 (1995).

<sup>23</sup> *First Report and Order* ¶ 184; see also Remarks of Commissioner Kevin J. Martin at SEARUC Conference (June 3, 2002).

<sup>24</sup> See *Oh v. AT&T Corp.*, 76 F. Supp.2d 551 (D.N.J.1999); *New York and Public Service Comm'n of New York v. F.C.C.*, 267 F.3d 91 (2d Cir. 2001); *Numbering Resource Optimization, Petition of the California Public Utilities Commission for Wavier of the Federal Communications Commission's Contamination Threshold Rule*, Order, 18 FCC Rcd 8352 (1996). Commissioner Martin has stated that "giving States additional flexibility in how to address numbering issues is crucial, because it is the State Commissions, not this Commission, that feel the outcry from consumers when numbering conservation measures are adopted." Separate Statement of Commissioner Kevin J. Martin, *Petition of the Connecticut Department of Public Utility Control for Delegated Authority to Implement Specialized Transitional Overlays*, Memorandum Opinion and Order, 18 FCC Rcd 10936 (2003). Commissioner Copps has also emphasized the importance of coordination with the states, "number conservation is not an issue that the federal government can-or should-undertake on its own. We need to work closely with the state public utility commissions on numbering issues. States have an integral role to play in number conservation efforts." Separate Statement of Commissioner Michael J. Copps, *Petition of the Connecticut Department of Public Utility Control for Delegated Authority to Implement Specialized Transitional Overlays*, Memorandum Opinion and Order, 18 FCC Rcd 10946 (2003).

<sup>25</sup> See e.g., *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003). The Commissions policy has been outlined as follows: It is entirely appropriate to fashion a transition period of sufficient length to enable competitive LECs to move

comply within days of the Commission's providing guidance would deny both wireline and wireless carriers the benefits of reaching industry consensus on how to standardize affected process flows. It would also deny wireline carriers a reasonable opportunity to make whatever changes to its network the compliance with the new standard would compel, because the same problems arise.

### **Porting Intervals**

Paragraph 26 of the *Wireless Order* also states that porting intervals in excess of two and one-half hours could violate the reasonableness standard of Section 201 of the Act. The current rules require wireline carriers to complete ports within 4 days and incorporate process flows developed by NANC to achieve that standard. It is hard to believe that, until that rule is amended, a carrier in compliance with those rules could be found to be in violation of Section 201. BellSouth has consistently expressed its willingness to work with the industry to reduce the time required to complete ports. BellSouth believes, however, that until the Commission amends the existing rule in accord with the requirements of the Administrative Procedure Act and directs NANC to recommend changes to existing process flows so that carriers nationwide follow the same procedures to meet the new standard, there can be no legal basis for a conclusion that failure to meet a porting standard of two and one-half hours would constitute a violation of the Communications Act.

### **Conclusion**

To maintain competitive parity between wireline and wireless carriers until the Commission can complete a full examination of all the advantages and disadvantages associated with changing the existing rules defining wireline carriers' porting obligations, BellSouth urges the Commission:

- (1) to deny the request of CTIA that wireline carriers be required to provide wireline-wireless portability within wireless service areas without regard to whether the wireless carrier has other numbers in a particular rate center and that wireline carriers be required to complete ports to wireless carriers within two and one-half hours of a valid request.
- (2) to require instead that wireline carriers port their customers' telephone numbers in accord with their obligations under Section 52.26(a). This would mean that, until the Commission amends Section 52.26(a) of its rules, a wireline carrier must port a customer's telephone number to a requesting wireless carrier only if the latter has numbering resources in the rate center in which the customer is located. We urge as well that the Commission

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their customers to alternative arrangements and modify their business practices and operations going forward." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-carrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151, ¶¶ 77-78 (2001) ("ISP Remand Order").

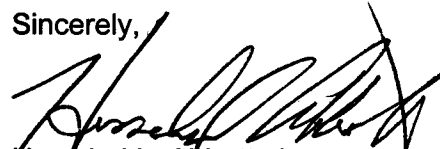
See also *Sprint Corp. v. F.C.C.*, 315 F.3d 369 (D.C. Cir. 2003).

<sup>26</sup> BellSouth has made a business decision that it will port a customer's telephone number to a wireless carrier even if that carrier does not have numbering resources in the customers rate center and does not assign to its customers located in that rate center only telephone numbers drawn from that rate center. See Letter from Kathleen Levitz, Bell South, to William Maher, FCC, and John Muleta, FCC (Oct. 9, 2003).

require that when a wireline customer who has chosen to port his telephone number to a wireless carrier moves out of the rate center associated with his telephone number, the wireless carrier must assign that customer a new telephone number drawn from numbering resources in the rate center to which he has moved.<sup>27</sup>

In accordance with Section 1.1206, I am filing this notice electronically and request that you please place it in the record of the proceeding identified above. Thank you.

Sincerely,



Herschel L. Abbott, Jr.

cc: Commissioner Abernathy  
Commissioner Martin  
Commissioner Copps  
Commissioner Adelstein  
Scott Bergmann  
Matthew Brill  
Cheryl Callahan  
Jared Carlson  
Jeffrey Dygert  
Sam Feder  
David Furth  
Dan Gonzalez  
Christopher Libertelli

William Maher  
Jennifer Manner  
Carol Matthey  
John Muleta  
Barry Ohlson  
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